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Atty. Dkt. No. 056859-0188

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Anil Kumar GUPTA et al.
Title: HIGH HERB, PHYLLANTHIN AND
HYPOPHYLLANTHIN YIELDING
CULTIVAR OF PHYLLANTHUS
AMARUS 'CIM-JEEVAN'
Appl. No.: 10/647,114
Filing Date: 08/25/2003
Patent No.: 7,446,243
Grant Date: 11/04/2008
Examiner: Kent L. BELL
Art Unit: 1661
Confirmation 9848
Number:

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 11/04/2008 as U.S. Patent No. 7,446,243.

The Patent Office determined that the patent was entitled to 745 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004) and that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

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On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1319 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1471 days
(b) Total Applicant delay:	152 days
Final PTA Determination:	1319 days

Applicants therefore respectfully request that the patent be accorded 1319 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date November 6, 2008

By Michael D. Kaminski

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Docket Number: 056859-0188
 Application Number: 10/647114
 Patent Number: 7446243

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	08/25/2003	0		
Edit Delete	Notice to File Missing Parts	12/03/2003	100		
	Notice to File Missing Parts + 3 months	03/03/2004	191		
Edit Delete	Response to Notice to File Missing Parts	05/03/2004	252		61
	14 month From Application date	10/25/2004	427		
	3 Year Period Starts	08/25/2006	1,096		
Edit Delete	Non-Final Office Action	04/10/2007	1,324	(897)	
	Non-Final Office Action + 3 months	07/10/2007	1,415		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	10/09/2007	1,506		91
Edit Delete	Ex parte Quayle Action	12/31/2007	1,589		
Edit Delete	Ex parte Quayle Action Response Received at PTO	03/18/2008	1,667		
Edit Delete	Notice of Allowance	06/27/2008	1,768		
Edit Delete	Issue Fee Paid	09/25/2008	1,858		
Edit Delete	Patent Grant Date	11/04/2008	1,898	(802) 1471	
			Totals:	1,471	152
			PTA:	1,319	

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